IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R.

ATMA RAM. V. THE JUDGE, LABOUR COURT & ANOTHER.

S. B. CIVIL WRIT PETITION NO.3133/2002,
under Articles 226 & 227 of the Constutiton of India.

DATE OF ORDER: 13.09.2005

PRESENT.

HON'BLE MR. JUSTICE R.P.VYAS

Mr.P.K.Lohra, for Petitioner.
Mr.S.K.Vyas, Government Advocate, for Respondents.

BY THE COURT:

REPORTABLE

By the instant petition, the petitioner has prayed that by an appropriate writ, order or direction, the impugned award dated 14.5.2001 (Annexure 5) may be quashed and set aside and the he may be reinstated with all consequential benefits.

Brief facts, giving rise to the instant petition, are that initially, vide order No.12414 dated 27.9.1984, the petitioner appointed as daily rated employee. He worked upto March 31, 1985, in different Sections and he completed 142 days and, thereafter, he was again appointed vide Order No.3262 dated 23.4.1985 and he worked upto the date of termination, i.e.,

10.8.1985. Thus, the petitioner claims that he has worked for more than 240 days in a calendar year.

It is further averred by the petitioner in the instant petition that vide order dated 10.8.1985, his services were terminated by the respondents by a verbal order, without giving him any notice and without complying with the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act, 1947').

Thereafter, the petitioner made a complaint before the Conciliation Officer, by way of raising an Industrial Disputes invoking the provisions of Section 10 of the Act, 1947. The Conciliation Officer took cognizance of the complaint and issued notices to the respondents. The respondents submitted their comments. Ultimately, the conciliation proceedings failed and the Conciliation Officer submitted a failure report before the appropriate government. The appropriate Government vide Notification No.96 dated March 23, 1988, made a reference for adjudication to the Labour Court, Jodhpur.

In pursuance to the reference, the Labour Court registered case No.77/98 and issued notices to the parties. The petitioner as as respondents put in appearance before the Labour Court and filed statement of claim and reply thereto, supported by the

respective affidavits. The petitioner stated in his statement of claim that he has completed 240 days in a calendar year, so his termination is bad in the eye of law as it is violative of Chapter 5 (A) of the Act, 1947. The petitioner also submitted that his services were taken by the respondents from 29.9.1984 to 9.8.1985 and before terminating his services, no seniority list was issued by the respondent and persons junior to the him, namely, Shri Sajjan Singh, Shri Mahtap Singh, Shri Rameshwar, Shri Srikishan and Shri Permanand were retained in the services, whereas the services of the petitioner were illegally terminated by the respondent. The petitioner as well as the respondents were cross-examined on their affidavits before the Labour Court.

After conclusion of the evidence, the petitioner filed an application dated 1.5.2001 (Annexure 4) under O.13, R.10 read with Section 151 of the Code of Civil Procedure, for summoning the relevant record before the Labour Court, Jodhpur, but the same was not considered by the Labour Court and was rejected vide order dated 1.5.2001. The Labour Court held that since the petitioner has not completed 240 days in a calendar year, he is not entitled to any relief. Consequently, vide award dated 14.5.2001, the claim petition of the petitioner was rejected by the learned Labour Court, Jodhpur.

Feeling aggrieved by the impugned award dated 14.5.2001 (Annexure 5), passed by the learned Labour Court, Jodhpur, the petitioner has preferred the instant petition before this Court.

It is submitted by the learned counsel for the petitioner that the learned Labour Court, Jodhpur, without calling the record and even without considering the application for calling the record has decided the case against the petitioner. The petitioner has stated on oath that he has completed 240 days in a calendar year and in order to substantiate this statement, he has filed the application before the Labour Court for summoning the record, but his application has been rejected by the Labour Court, whereas the statement of Shri Sunil Singhal (Annexure 3), who has given the statement on the basis of his personal knowledge, but in the absence of the relevant record, has been relied upon by the Labour Court. Thus, in this view of the matter, according to the learned counsel, the learned Labour Court has committed an error apparent on the face of the record.

It is further submitted by the learned counsel for the petitioner that the learned Labour Court has ignored the cross-examination of Shri Sunil Singhal (Annexure 3), in which he has specifically stated that no entry in the Muster Roll, regarding the

amendment of the service of the petitioner, was marked. Despite this, the learned Labour Court has given finding against the petitioner.

It is also submitted by the learned counsel for the petitioner that his case falls within the purview of not only under Section 25F of the Act, but under Chapter 5 (A) of the Act, 1947 and the Rules made thereunder. Even then, the learned Labour Court has ignored the basic provisions of Section 25G of the Act 1947 and Rule 77 of the Rules, 1957, regarding retrenchment and seniority list of the workmen. In this connection, the learned counsel has invited the attention of this Court to the case of Samishta Dubey v. City Board to the Itawa and another, reported in (1999) 3 SCC 14 , in which with regard to the applicability of the seniority list for the daily wagers, their Lordships of the Supreme Court have held as under :-

> "We shall next deal with the point whether, in case employees junior to the appellant were retained, the directions issued by the Labour Court could be treated as valid. Section 6-P of the U. P. Act (which corresponds to Section 25F of the Central Act of 1947) states that where any workman in a industrial establishment is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workmen in this behalf – the employer shall ordinarily retrench the workmen who was the last

> person to be employed in that category, unless for reason to be record, the employer retrenches any other person. No this provision is not controlled by conditions as to length of service contained inSection6-N (which corresponds to Section 25-F of the Industrial Disputes Act, 1947). Section6-P dos not require any particular period of continuous service as required by Section 6-N. In Kamlesh Singh v. Presiding Officer in a matter which arose under this very Section 6-P of the U. P. Act, it was so held. Hence the High Court was wrong in relying on the fact that the appellant had put in only three and a half months of service and in denying relief.

It is vehemently argued by the learned counsel for the petitioner that the services of the petitioner were utilized by the respondent from 27.9.1984 to 9.8.1985 and the petitioner has completed 240 days in a calendar year. In order to substantiate this fact, the petitioner filed an application (Annexure 4) for summoning the record, before the Labour Court, Jodhpur but the Labour Court , without considering the application, rejected it vide order dated 1.5.2001 and gave a finding against the petitioner and denied the relief to the petitioner, which, according to the learned counsel, is against the principles of Industrial Jurisprudence. Apart from that, by not doing so, the learned Labour Court has ignored the basic tenets of the Act, 1947 and it acted contrary to the concept of an interpretation of beneficial piece of legislation.

In support of his contentions, learned counsel for the petitioner has placed reliance on the case of Bhanwara Ram v. Judge, Labour Court and Others (S.B.Civil Writ Petition No.3511/2003) decided on 16.2.2005. The relevant portion of the order reads as under :-

> "I have examined all the relevant documents as well as arguments advanced before me by the learned counsel for the parties and scanned the impugned award dated 1.4.2004 (Annexure 1) passed by the Labour Court, Jodhpur. So far as the completion of 240 days is concerned, the petitioner has mentioned this fact in his claim petition that he has completed 240 days. He has also moved an application on 16.7.2002 before the Labour Court to give direction to the respondents-university to bring the relevant documents and produce the same before the Court. That application was dealt with by the Labour Court, but no finding regarding this fact was given by it whether the required document was ordered to be produced and whether the document was produced by the respondents-university, during the court of enquiry.
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> In these circumstances, presumption can be drawn against the respondents-university that the respondents-authority has failed to controvert this fact before the Labour Court. In spite of that, the Labour Court has decided the issue, without taking into consideration this important aspect of the matter and observed that the petitioner has failed to establish the fact that he has completed 240 days in a calendar year. The burden lies on the respondents-authority to discharge, but

> the same has not been discharged by them, so the presumption should be drawn against the respondents-university and not against the petitioner.

In National Insurance Company Ltd., New Delhi v. Jugal Kishore and Others, reported in (1988) 1 SCC 626, their Lordships of the Supreme Court held that it is the duty of the party which is in possession of a document which would be helpful in doing justice in the cause to produce the said document and such party should not be permitted to take shelter behind the abstract doctrine of burden of proof.

In Oriental Bank of Commerce v. The Presiding Officer, Central Government Industrial Tribunal & another (1992 (1) WLC (Raj.) 464), this Court, while fortifying with the view with respect of Section 2 (oo) and Sections 25G and 25H of the Act, 1947 taken by the learned Single Judge in S.B.Civil Writ Petition No.3585/89 (Dharampal Singh v. State of Rajasthan) decided on 13.11.1990, observed as under :-

> "A bare reading of the above said provision shows that any termination of service except the cases mentioned in Clauses (a), (b), (bb) and © would amount to retrenchment. A person who has worked for more than one year is entitled to benefits mentioned in Sections 25F, 25FF and 25FFF, but those benefits are not available to a person who has not served the employer for the above said statutory period. Whether a person has completed the

> service of statutory period or not he is however entitled for the benefits mentioned in Sections 25F and 25H of the Act and as such if the retrenchment is to be made even of a person who has worked for less than the statutory period it has to be on the basis of first come last go and when management re-employ certain persons, the offer of re-employment has to be given to those who have been retrenched if they are willing to work."

In Central Bank of India v. S.Satyam and Other, reported in (1996) 5 SCC 419, it was held by their Lordships of the Supreme Court that Section 25-H speaks only of re-employment of 'retrenched workmen'. The ordinary meaning of the expression 'retrenched workmen' must relate to the wide meaning of 'retrenchment' given in Section 2(oo). Section 25-F does not restrict the meaning of retrenchment, but qualified the category of retrenched workmen covered therein by use of the further words "workman" who has been in continuous service for not less than one year . Section 25-G prescribes the principle for retrenchment and applies ordinarily to the principle of "last come first go" which is not confined only to workmen who have been in continuous service for not less than one year, covered by Section 25-F. Similarly, 77 requires the employer to maintain a seniority list of workmen in that particular category from which retrenchment is contemplated and arranged according to the seniority of their service. The category of

workmen to whom Section 25-F applies is distinct from those to whom it is inapplicable. There is no practical difficulty in maintenance of seniority list of workmen with reference to the particular category to which they belong.

On the other hand, it is submitted by Mr.S.K.Vyas, learned Government Advocate, appearing on behalf of the respondent that the learned Labour Court has given a categorical finding that the petitioner has not worked for more than 240 days.

It is further submitted by the learned counsel for the respondent that vide Order No.12414 dated 27.9.84, the petitioner was engaged for a period of three months for a specific work of making certain entries. He has worked for 142 days in different pieces of period. He did not work in the Department from 21.9.1984 to 22.4.1985. Vide Order dated 3262 dated 23.4.85, he was appointed by the Executive Engineer II for a specific work and he worked in different pieces for a total period of 88 ½ days. Since the petitioner was engaged for a specific work, his services lasted with the completion of the work. According to the learned counsel, since the petitioner was appointed for a specific work for few days, there arises no question of any seniority.

It is also submitted by the learned counsel for the respondent that after termination of the services of the

petitioner, in the year, 1985, he remained silent for a long period of nine years and has not given any good cause for the same, therefore, he is not entitled to any any relief from the Labour Court as well as by this Court. Apart from that, he was appointed for a specific period and he has not worked for more than 240 days in a calendar year, therefore, the provisions of Section 25F and 25B are not attracted. Learned counsel for the respondent submitted that he petitioner has filed an application under Order 13, Rule 10 read with Section 151, CPC, for summoning the record at a late stage and as the matter was fixed final hearing, the same was rightly rejected by the learned Labour Court vide order dated 1.5.2001. In this view of the matter, according to the learned counsel for the respondent, the impugned award of the Labour Court is well reasoned and deserves to be upheld by this Court.

Heard learned counsel for the parties.

It is admitted position that where the petitioner was working with the respondent, is a permanent establishment and availability of work entrusted to the petitioner is no more in dispute. It is also admitted position that the services of the petitioner were taken by the respondent from 27.9.1984 to 9.8.1985 from different dates by different years. Thereafter, by a verbal order, the services of the petitioner were terminated by

the respondent. Such type of practice of the respondent is against the basic principles of Industrial Disputes. Apart from that, the socio-economic justice is the need of the hour and for achieving it fusion of Fundamental Rights and Directive Principles of State Policy is essential. The socialism is not to be treated as a mere concept or an ideal but the same should be practised in every sphere of life.

Taking into consideration these principles, if the impugned award of the Labour Court is examined, then it will obviously reveal that the learned Court below has ignored the basic principles of the Act, 1947. I have scanned and scrutinized all the relevant documents as well as arguments advanced before me by both the learned counsel for the parties and examined the impugned award passed by the learned Labour Court, Jodhpur. So far as the completion of 240 days in a calendar year is concerned, the petitioner has mentioned this fact in his claim petition as well as the instant petition that he has completed 240 days. He has also moved an application under Order 13, Rule 10 read with Section 151, CPC, for directing the respondent to bring the relevant record and produce the same before the Labour Court, so that actual position may come out before the Court. But the same was rejected by the Labour Court vide order dated 1.5.2001. It was mentioned by the Labour Court in the order-sheet dated 1.5.2001 that since the matter

has been fixed for final hearing, at this stage, it will not be proper to consider the application for summoning the record. In these circumstances, presumption can be drawn against the respondent that the respondent – employer did not produce the relevant record before the Labour Court. Since the record was in the possession of the respondent, it was their obligatory duty to produce the same before the Labour Court for adjudication of the controversy. Apart from that, the Labour Court has decided the issue, without taking into consideration this important aspect of the matter and observed that the petitioner has not completed 240 days in a calendar year. The burden lies on the respondent to discharge the same, but the same has not been discharged by them, so the presumption should be drawn against the respondent, particularly when Shri Sunil Singhal has stated in his cross-examination that he does not know whether the persons, namely, Shri Sajjan Singh, Shri Mehtab Singh, Shri Parmeshwar and two others, who are junior to the petitioner, are still working in the establishment or not. He further stated that he is giving this statement on the basis of his personal knowledge only. He also stated on oath that the petitioner has not worked from 1.4.1985 to 22.4.1985.

The learned Labour Court has given a categorical finding that the Assistant Engineer has given statement on the basis of the record that vide Order No.12414 dated 27.9.84, the petitioner was given appointment for a specific work for a period

of three months, whereas, when the application for summoning the record was itself rejected by the Court below, then how the said representative of the employer gave statement on the basis of the record. Apart from that, Shri Sunil Singhal has stated stated on oath that he has given the statement on the basis of his personal knowledge and record. It is significant to note that when the application for summoning the record itself was rejected by the Labour Court, then how his statement, said to have been given on the basis of the record, is relied upon by the Labour Court. The Labour Court also gave a finding that the statements given by the non-claimants on the basis of the record reveals that the petitioner has not worked for more than 240 days in a calendar year. Again, when the application for summoning the record itself was rejected, then how the non-claimants gave the statements on the basis of the record, whereas, the relevant record, at all, was not produced by them, despite the same being in their possession.

In this view of the matter, in the interest of justice, I deem it just and proper to quash and set aside the impugned award dated 14.5.2001 (Annexure 5), passed by the Labour Court, Jodhpur and remand the matter back to the Labour Court with a direction to decide it afresh, after affording a reasonable opportunity of hearing to both the parties. Ordered accordingly. The Labour Court shall call the relevant record from the respondent as mentioned by the petitioner in his application filed

under O.13, Rule 10 read with Section 151, CPC, already moved before the Labour Court and thereafter, decide the matter expeditiously, in accordance with law, preferably within a period of three months from the date of receiving a certified copy of this order. Both the parties are directed to appear before the Labour Court on or before September 20, 2005.

With the aforesaid directions, the writ petition stands disposed of. There will be no order as to costs.

(R.P.VYAS), J.

scd.